MONTANA LEGISLATIVE HISTORY

Chapter 535 19 85

Bill H 743 S _____ Original bill & history ✓ C

H. Committee on Human Services & Aging			S. Committee on _____		
Hearing Date(s)	Feb 20	✓ C	Hearing Date(s)	Mar 08	✓ C
	_____	___ C		Mar 15	✓ C
	_____	___ C		Mar 18	✓ C
	_____	___ C		_____	___ C
Date Out	_____	___ C		Mar 18	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HOUSE BILL NO. 743

INTRODUCED BY MILLER

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE HOUSE

February 9, 1985	Introduced and referred to Committee on Human Services and Aging.
February 13, 1985	Fiscal Note requested.
February 19, 1985	Fiscal Note returned.
February 22, 1985	Committee recommend bill do pass. Report adopted.
	Statement of Intent attached.
	Bill printed and placed on members' desks.
February 25, 1985	Second reading, do pass.
	Considered correctly engrossed.
February 26, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 19, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 22, 1985	Second reading, concurred in as amended.

March 25, 1985	Third reading, concurred in. Ayes, 49; Noes, 0.
	Returned to House with amendments.
	IN THE HOUSE
March 26, 1985	Received from Senate.
April 8, 1985	Second reading, amendments concurred in.
	On motion rules suspended and bill placed on third reading this day.
	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 743

INTRODUCED BY Hill

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE SUBROGATION RIGHTS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES REGARDING THE PROVISION OF MEDICAL BENEFITS ON BEHALF OF A PERSON FOR WHOM A THIRD PARTY IS LIABLE; AMENDING SECTIONS 53-2-612 AND 53-3-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-2-612, MCA, is amended to read:

"53-2-612. Subrogation and third party liability for certain benefits. (1) The department is subrogated to the right of each ~~needy-person-who-is-a~~ recipient or beneficiary of medical benefits ~~under--Title--XIX-or-XX-of-the-Social Security-Act~~ to recover damages or compensation from a third party to the extent necessary to reimburse the department for medical benefits paid to or on behalf of the ~~needy~~ person recipient or beneficiary. Upon determination that a third party is liable for the medical expenses of a ~~needy~~ person recipient or beneficiary under this section, the department shall immediately notify the third party of the subrogation.

(2) The department may, in the name of the ~~needy~~ person recipient or beneficiary to whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the ~~needy--person~~ recipient or beneficiary. ~~From---the---amount---collected---from--legal proceedings-or-as-a-result--of--settlement,--the--department shall--retain--the--full--amount--previously-paid-as-medical benefits,-allocating-to-the-county-and-federal-government--a share---proportionate--to--their---contribution--and,--after deducting-the-costs-of-the-proceeding,-deliver-the-remainder to--the--needy--person.--The--total---amounts---awarded---as compensation-for-pain-and-suffering-or-which-are-punitive-in nature--shall-be-delivered-to-the-needy-person.~~ This section does not affect the ~~needy-person's~~ right of the recipient or beneficiary to initiate and prosecute to final conclusion an action for damages or compensation in his own name in accordance with the provisions of this section.

(3) From the amount collected from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be deducted first. The amount previously paid as medical benefits by the department, less a pro rata share of attorney fees and costs, must be deducted next and paid to

INTRODUCED BILL
HB 743

the department. The remainder must be paid to the recipient or beneficiary. However, any recipient or beneficiary who initiates an action to recover damages or compensation shall receive no less than one-third of the total amount recovered after the deduction of reasonable attorney fees and costs.

~~(3)~~(4) A ~~needy---person---who---is--a~~ recipient or beneficiary of medical benefits or his legal representative shall notify the department ~~of-any-action-initiated-or-of any-compromise-or-settlement-agreed-to-by-the--needy--person or-his-legal-representative-for-the-recovery-of-compensation or--damages--for--medical-expenses-to-which-medical-benefits have-been-applied.-Notice-shall-be-given-by-service-upon-the department-of-the-legal-instrument-initiating-the-action--or embodying--the--compromise--or--settlement;~~ by means of a certified letter if the recipient or beneficiary or his legal representative asserts a claim against a third party or his insurer for damages or compensation for an injury for which the department paid medical benefits in whole or in part. The notice must be mailed to the director of the department and must contain the following information:

(a) the name and address of the recipient or beneficiary;

(b) the name of the third party alleged to be liable to the recipient or beneficiary;

(c) the name and address of any known insurer of the

third party; and

(d) the judicial district and docket number of any action filed.

~~(4)--No-portion-of-attorneys'-fees-may-be-withheld-from the-amount-collected-from-legal-proceedings-or-as--a--result of--settlement--which-is-due-the-department-under-subsection (1)-without-prior-approval-of-the-department;~~

(5) (a) No recipient or beneficiary who has received medical assistance from the department as a result of an injury which creates a claim or cause of action may release the liable third party or his insurer from liability to the department. If any liable third party or his insurer, after receiving notice of the department's subrogation claim, makes payment on account of injury or death and the department has not been reimbursed for the medical benefits paid on behalf of the recipient or beneficiary, the insurer or third party is liable to the department for the amount of medical benefits paid by the department.

(b) The notice requirements of subsection (5)(a) are satisfied if:

(i) the insurer receives from the department, by certified mail, a statement of the claims paid or medical services rendered by the department, together with a claim for reimbursement; or

(ii) the insurer receives a claim from a recipient or

beneficiary stating that the recipient or beneficiary has applied for or has received medical assistance from the department in connection with the same claim.

~~(5)~~(6) As used in this section, "third party" means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a ~~needy person--to--which-Title-XIX-or-XX-benefits-have-been-applied~~ recipient or beneficiary of medical benefits from the state or county and includes but is not limited to insurers, health service organizations, and those liable in tort."

Section 2. Section 53-3-103, MCA, is amended to read:

"53-3-103. Medical aid and hospitalization for indigent. (1) Except as provided in other parts of this title, medical aid and hospitalization for county residents and nonresidents within the county unable to provide these necessities for themselves are the legal and financial responsibility of the county commissioners and are payable from the county poor fund. The county commissioners shall make provisions for competent and skilled medical or surgical services. "Medical" or "medicine" as used in this section refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care

provided by physicians appointed by the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The department may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". However, the definition may not allow payment by a county for general assistance--medical for persons whose income exceeds 300% of the limitation for obtaining regular county general relief assistance or for persons who are eligible for medicaid in accordance with Title 53, chapter 6, part 1, or for persons who have the right or are entitled to medical aid and hospitalization from the federal government or any agency thereof.

(4) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 53-2-612 ~~which-relate-to--medical--benefits--provided--under~~

~~Title--XIX-or-XX-of-the-Social-Security-Act~~ apply to medical benefits provided for in this section."

NEW SECTION. Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STATE OF MONTANA

F I S C A L N O T E

REQUEST NO. FNN424-85

Form BD-15

In compliance with a written request received February 13, 19 85 , there is hereby submitted a Fiscal Note for H.B. 743 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act to clarify the subrogation rights of the Department of Social and Rehabilitation Services regarding the provision of medical benefits on behalf of a person for whom a third party is liable.

ASSUMPTIONS:

1. There will be 60 tort related accident cases for which SRS will pay the medical expenditure each year of the biennium.
2. The average medical expenditure will be $10,000 per case.
3. The average recovery under the current statute would be 60 percent of the expenditure.
4. The average recovery under the proposed legilsation will be 67 percent of the expenditure.
5. Enactment of the legislation will increase collections by $42,000 per year (60 cases at $10,000 times 7%).
6. Recoveries in each fiscal year are for expenditures in the prior fiscal year.

FISCAL IMPACT:

	FY1986			FY1987		
	Current Law	Proposed Law	Increased Recoveries	Current Law	Proposed Law	Increased Recoveries
Recoveries	($360,461)	($400,712)	$40,251	($360,461)	($400,712)	$40,251
Fund Savings:						
General Fund	($128,288)	($142,613)	$14,325	($122,953)	($136,683)	$13,730
Federal Funds	($232,173)	($258,099)	$25,926	($237,508)	($264,029)	$26,521

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 8, 1985

FN9:J/1

HB 743

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 20, 1985

The meeting of the Human Services and Aging Committee was called to order by Chairperson Nancy Keenan on January 20, 1985 at 5:10 p.m. in 312-2 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 783: Hearing commenced on House Bill No. 783. Representative Miles, District #45, sponsor of the bill stated that an act establishing the rights of residents of long term care facilities; providing that a resident must be informed of his rights; requiring posting of these rights by long term care facilities; and providing penalties was needed. Ms. Miles also discussed amendments proposed for this bill.

Proponents included Norma Harris of the Montana Department of Social and Rehabilitation Services who voiced her support to this legislation. Doug Blakeley, representing the Office of the Governor, said that the language used in drafting this legislation was borrowed from other states that had enacted the same legislation. A thirty day discharge notice before discharge, transfer of patients are two of the main concerns of this bill. Charles Briggs also of the Office of the Governor said that Montana does not have a bill of rights for nursing home residents. Doug Olson, an attorney for the Long Term Ombudsman Program in the Office of the Governor stated his support for this bill. Molly Monroe, representing the Montana Association of Homes for the Aging states that this bill brings state regulations into conformity with federal regulations. Ms. Monroe also states that the members in her facilities already have the bill of rights posted in their nursing and retirement homes. Exhibit 1 indicate Ms. Monroe's support. Rose Skoog, representing the Montana Health Care Association suggested some amendments to this bill. Jim Schwin, a former mental patient reiterated experiences he had had as a patient in a mental facility. William E. Leary, representing the Montana Hospital Association indicated his support as did Tom Ryan of the Montana Senior Citizen's Association.

There were no further proponents and opponents present. Representative Miles was then excused by the Chair.

There being no further discussion on House Bill No. 783, the hearing was closed.

HOUSE BILL NO. 743: Hearing commenced on House Bill No. 743. Representative Miller, District #34, sponsor of the

bill said that an act to clarify the subrogation rights of the Department of Social and Rehabilitation Services regarding the provision of medical benefits on behalf of a person for whom a third party is liable was needed.

Proponent Pat Godbout, representing the Montana Department of Social and Rehabilitation Services indicated her support of this bill.

There were no further proponents and opponents present. Representative Miller was then excused by the Chair.

Representative Waldron questioned the definition of subrogartion.

There being no further discussion on House Bill No. 743, the hearing was closed.

HOUSE BILL NO. 821: Hearing commenced on House Bill No. 821. Representative Schye, District #18, sponsor of the bill, stated that an act providing medicaid coverage for psychiatric services and alcoholism treatment services was needed.

Proponent Francis Brunelle, representing the FMD Hospital in Glasgow indicated his support of this legislation. Douglas Settles, representing Shodair Hospital in Helena also stated his support. Buck Collins, representing the Deaconess Hospital in Great Falls stated that the hospital supports this bill. William E. Leary, representing the Montana Hospital Association was of the opinion that the more people treated in either of these programs the safer all citizens in Montana will become. Jerry Loendorf, representing the Montana Medical Association stated his support as did John Larson, representing the Montana Department of Social and Rehabilitation Services. Mr. Larson also discussed the fiscal note which had been prepared by the SRS.

There were no further proponents and opponents present. Representative Schye was then excused by the Chair.

Question were then asked for. Representative Phillips questioned whether or not federal funding was available. Representative Waldron asked for a forecast as to how many patients they estimated would be treated. Representative Simon asked why drug/alcohol funding would not meet with the approval of the hospitals for funding.

ACTION ON HOUSE BILL NO. 743: A motion was made by Representative Campbell which was seconded by Representative Hanson to DO PASS WITH STATEMENT OF INTENT on House Bill No. 743. A vote was taken which passed unanimously.

ACTION ON HOUSE BILL NO. 783: A motion was made by Representative Gould which was seconded by Representative Darko to do pass. Representative Gould then made a motion on the amendments which was seconded by Representative Darko. A vote was taken. Representative Darko then made a motion to DO PASS AS AMENDED on House Bill No. 783. A vote was taken will all voting yes with the exception of Representatives Gilbert, Simon, Campbell, Hanson, Hayne and Gould.

ACTION ON HOUSE BILL NO. 772: A motion was made by Representative Campbell which was seconded by Representative Gilbert to table House Bill No. 772. A roll call vote was taken to table (11 yes and 6 no, Representative Bradley not voting) House Bill No. 772 was then TABLED.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 10:25 p.m.

Nancy Keenan
NANCY KEENAN, Chair

STANDING COMMITTEE REPORT

February 20 19 85

MR. Speaker

We, your committee on Human Services and Aging

having had under consideration House Bill No. 743

first reading copy (white color)

Subrogation rights of seniors - 3rd party liability for medical benefits

Respectfully report as follows: That House Bill No. 743

STATEMENT OF INTENT ATTACHED

XDO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

Human Services and Aging
House Bill 743

STATEMENT OF INTENT

Under the amendment set forth as 53-2-612 (3), the legislature intends that the department recover all medical expenses paid, less its share of reasonable attorney's costs, in those cases where the total recovery net of attorney fees and costs is sufficient to pay the department and allow the recipient at least one-third of the net recovery. Where the net recovery is insufficient to reimburse the department for its costs and the recipient for other damages, this section requires the department to compromise its claim but only to the extent necessary to allow the recipient one-third of the net recovery. A recipient would not, under this statute, receive more than one-third of the net recovery unless and until the department has been reimbursed for its costs, net of attorney fees.

DO PASS
WITH STATEMENT OF INTENT

.....
Chairman.

STATE PUB. CO.
Helena, Mont.

CONSIDERATION OF HOUSE BILL 743: Representative Ron Miller of Great Falls, the chief sponsor of House Bill 743, gave a brief resume of the bill. This bill is an act to clarify the subrogation rights of the Department of Social and Rehabilitation Services regarding the provision of medical benefits on behalf of a person for whom a third party is liable.

Mr. Miller stated that the State pays for needy people when they cannot pay following an accident. This bill would make for a greater recovery for the state. This bill would allow the department to recover all medical expenses paid, less its share of reasonable attorney's costs in those cases where the total recovery net of attorney fees and costs is sufficient to pay the department and allow the recipient at least one third of the net recovery. The recipient would only ever receive, at the most, one third. The counties would probably recieve most of the return.

Pat Godbout, administrator for the Department of SRS, stood in support of the bill. She stated that this bill would encourage people to cooperate in recovering funds. This is a logical way to handle this problem.

With no further proponents, the chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Towe asked Mrs. Godbout if this is to be handled in the same way as Workman's Compensation. It is patterned somewhat after Workmen's Comp, but it is a combination of other ideas also.

Ms. Godbout told of an incident which happened in Yellowstone County where the recipient sued for one million and recieve the same and the state received nothing. Under this bill that would not be possible. She reported that the state has had a real problem in matters of this nature.

Representative Miller closed.

ANNOUNCEMENTS: The next meeting of the Senate Public Health will be heard on Monday, March 11, 1985 in Room 410 of the State Capitol to hear HB 114, 540, 649, 783, 807, and 817.

ADJOURN: With no further business the meeting was adjourned.

eg

Judy Jacobson
SENATOR

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 15, 1985

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Judy Jacobson on Friday, March 15, 1985 in Room 410 of the State Capitol at 12:30.

ROLL CALL: All senators were present with the exception of Senator Lynch who was excused. Senators Towe and Newman arrived late. Karen Renne, staff researcher, was also present.

There were many visitors in attendance. See attachments.

ACTION ON HOUSE BILL 186: Representative Paul Pistoria of Great Falls is the chief sponsor of HB 186 which is an act allowing passage of county ordinances to control community decay caused by accumulation of rubble and providing an immediate effective date.

A motion was made by Senator Himsl to adopt the proposed amendments which would exempt farming and ranching from the bill. Motion carried.

A motion was made by Senator Himsl that HB 186 BE CONCURRED IN AS AMENDED. Motion carried with all present voting "yes" with the exception of Senator Hager, who voted "no".

DISCUSSION ON HOUSE BILL 743: Representative Ron Miller of Great Falls in the sponsor of HB 743. This bill is an act to clarify the subrogation rights of the Department of Social and Rehabilitation Services regarding the provisions of medical benefits on behalf of a person for whom a third party is liable.

Senator Himsl asked that the Committee pass HB 743 for the day as he is waiting for more information. The chairman stated that the committee would pass consideration for the day on HB 743.

ACTION ON HOUSE BILL 737: Representative Toni Bergene of Great Falls is the chief sponsor of HB 737. This is an act permitting a county attorney or county welfare department to convene adult protective service teams to assist older persons who are victims of abuse, neglect, or exploitation; permitting disclosure of reports filed under the Montana Elder Abuse Prevention Act to such teams.

A motion was made by Senator Lynch that HB 623 BE CONCURRED IN. Motion carried.

Senator Towe will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 646: House Bill 646 introduced by Representative Paul Rapp-Svrcek is an act defining "organic food" and requiring accurate labeling of organic food; providing for remedies; and providing an effective date and an applicability date.

A motion was made by Senator Lynch that HB 646 BE CONCURRED IN. Motion carried. with all present voting "yes" with the exceptions of Senators Stephens and Newman, who voted "no".

Senator Jacobson will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 743: House Bill 743 introduced by Representative Ron Miller is an act to clarify the subrogation rights of the Department of Social and Rehabilitation Services regarding the provision of medical benefits on behalf of a person for whom a third party is liable.

A motion was made by Senator Towe that the bill be amended on page 2, line 23; strike "The"; and insert "Unless all parties agree to a different settlement, the". Motion carried.

Senator Towe stated that this processs is different than that of Worker's Compensation.

A motion was made by Senator Lynch that HB 743 BE CONCURRED IN AS AMENDED. Motion carried.

Senator Mazurek will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 280: House Bill 280 introduced by Representative Toni Bergene is an act to provide that violation of the Federal Drug Abuse Prevention and Control Act is grounds for revocation of a pharmacist's license and providing an immediate effective date. This bill was requested by the Board of Pharmacy.

Senator Norman stated that federal law takes care of this problem already and therefore, the bill was not necessary.

STANDING COMMITTEE REPORT

March 13 19 85

MR. PRESIDENT

We, your committee on Public Health, Welfare and Safety

having had under consideration House Bill No. 743

third reading copy (blue color)

SUBROGATION RIGHTS OF SRS - 3RD PARTY LIABILITY FOR MEDICAL BENEFITS

MILLER (MEASURE)

Respectfully report as follows: That House Bill No. 743

be amend as follows:

1. Page 2, line 23.
Following: "first."
Strike: "The"
Insert: "Unless all parties agree to a different settlement, the"

~~DO PASS~~

~~DO NOT PASS~~ AND AS AMENDED BE CONCURRED IN

SENATOR JUDY JACOBSON, Chairman.